

Federal Communications Commission

DA 03-630

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations.
(Alamo and Milan, Georgia)

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)

MM Docket No. 01-111
RM-10124
RM-10341

REPORT AND ORDER
(Proceeding Terminated)

Adopted March 12, 2003**Released: March 14, 2003**

By the Assistant Chief, Audio Division:

1. In response to a Petition for Rule Making filed by Radio East Corp. ("Petitioner"), the Audio Division considers herein a **Notice of Proposed Rule Making**,¹ proposing the allotment of Channel 287C3 to Alamo, Georgia, as that community's first local aural transmission service. Petitioner filed comments and reply comments. In its comments, Petitioner expresses its continuing interest in filing an application for authority to construct and operate an FM station in Alamo, utilizing Channel 287C3, if that channel is allotted to Alamo. During the rulemaking proceeding herein, the Commission issued a **Public Notice**, Report No. 2520, in which it announced the filing of an application (File No. BMPH-20010522AAD) by Tel-Dodge Broadcasting Co. ("Tel-Dodge"), licensee of Station WMCG(FM) ("Station WMCG"), to move the transmission facilities of Station WMCG, Milan Georgia, on Channel 285C2, to a new site. That application is mutually exclusive with Petitioner's proposal (RM-10124) and was filed after the Petition for Rule Making, but prior to the close of the initial comment period in this rulemaking proceeding, and is therefore being considered as a timely counterproposal (RM-10341) in this proceeding.² Petitioner, Tel-Dodge, and Georgia-Carolina Radiocasting Company, LLC filed comments in response to the **Public Notice**.

2. In its comments filed in response to the foregoing **Public Notice**, Tel-Dodge proposes to eliminate the mutually exclusivity between its application and Petitioner's rulemaking proposal. Tel Dodge claims that if it amended its application to specify a different site and the Petitioner's proposal were changed to specify a Class A station at a site designated by Tel-Dodge in its comments, both proposals would comply with the Commission's Rules and could be granted. This recommendation cannot be favorably entertained for two reasons. First, since the Tel-Dodge proposal suggesting a Class A allotment at Alamo **was** filed after the date for filing counterproposals in this proceeding, it must be rejected pursuant to Section 1.420(d) of the Commission's Rules. Second, if it were to be considered, our engineering studies show that Station WMCG at the revised site would fail to provide the required 70 dBu city grade coverage of its city of

¹ *Alamo, Georgia*, 16 FCC Rcd 11054 (MMB 2001)

² See Section 1.420(d) of the Commission's **Rules and Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments ("Conflicts")**, 7 FCC Rcd 4917 (1992), *recon. granted in part and denied in part*, 8 FCC Rcd 4743 (1993).

license, namely, Milan, Georgia. In its reply comments to the foregoing Public Notice, Petitioner argues that its proposal to allot Channel 287C3 to Alamo should prevail over Station WMCG's application because the Alamo proposal would provide a first local service, while Station WMCG's application merely provides for the expansion of an existing station. Georgia-Carolina Radiocasting Company, LLC also argues that the Alamo proposal should be preferred.

3. Since Tel-Dodge's application (File No. BMPH-20010522AAD) is mutually exclusive with Petitioner's rulemaking proposal to allot Channel 287C3 to Alamo and since Tel-Dodge's application was filed after Petitioner's rulemaking petition and prior to the close of the initial comment period in this proceeding, the merits of Tel-Dodge's application must be compared with those of Petitioner's rulemaking proposal pursuant to the FM allotment priorities set forth in *Revision of FM Allotment Policies and Procedures* ("FM Priorities").³ The allotment of Channel 287C3 at Alamo would constitute a first local service, which is priority (3) under the Commission's *FM Priorities*. Tel-Dodge's application would fall under priority (4) which concerns the provision of other public interest matters. Furthermore, no white⁴ or gray⁵ areas would receive new service from Petitioner's proposal or Tel-Dodge's application. Finally, a new allotment is preferred to the expansion of an existing service, and Petitioner's Alamo proposal must prevail on this basis alone.⁶

4. We conclude that the public interest would be served by the allotment of Channel 287C3 at Alamo, Georgia, since it will provide a first local aural transmission service to that community. Channel 287C3 can be allotted to Alamo, Georgia, consistent with the requirements of Sections 73.207(b)(1) and 73.315(a) of the Commission's Rules at coordinates 32-19-29 NL and 8243-23 WL, with a site restriction of 20.4 kilometers (12.7 miles) north of Alamo's center city coordinates.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective April 28, 2003, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules IS AMENDED for the community listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Alamo, Georgia	287C3

³ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service, and (4) Other public interest matters. Co-equal weight is given to priorities (2) and (3).

⁴ A "white" area is an area that receives no aural services

⁵ A "gray" area is an area that receives one aural service

⁶ See, e.g., *Bear Lake and Honor, Michigan*, 14 FCC Rcd 8799 (1999).

6. A filing window for Channel 287C3, Alamo, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

7. IT IS FURTHER ORDERED that the Petition for Rule Making (RM-10124) filed by Radio East Corp. IS GRANTED and the application (File No. BMPH-20010522AAD) (RM-10341) filed By Tel-Dodge, Broadcasting Co. will be processed consistent with this Report and Order.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact R. Barthen Gorman, Media Bureau, (202)418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Media Bureau